

1           A     I think all the projects that I saw and the state  
2 of the market at that point in time, there was not enough  
3 revenues to go around for a sixth station. Yeah, I believe  
4 that's correct, and nobody will finance a proposition that  
5 is not able to pay for itself. I believe that statement is  
6 correct. Yes, sir.

7           Q     Now, it's also true, Mr. Rey, that Rainbow  
8 continued to maintain the position that if Press were to be  
9 allowed on the top slot of the tower, that Rainbow would not  
10 be able to obtain financing to build and operate its  
11 station, strike that. I'm sorry that question has gotten  
12 too convoluted.

13                     Isn't it also true, Mr. Rey, that Rainbow  
14 continued to maintain through January of 1991 that if Press  
15 were allowed to put its antenna onto the Bithlo Tower, the  
16 top slot, that Rainbow would not be able to secure  
17 financing?

18           A     Mr. Cole, it's the same answer again.

19                     I believe that if Rainbow were to be relegated as  
20 the sixth station in the marketplace, there was not enough  
21 revenues to go around to make that station, the sixth  
22 station, that is, viable, and I don't think anybody in their  
23 right mind would have put money into something that could  
24 not pay for itself.

25           Q     Now, that would continue to be your position,

1 Rainbow's position through January and February of 1991?

2 A When I made this statement in January at the  
3 hearing, that is the position, yes, sir.

4 Q You testified this morning about your relationship  
5 with Mr. Conant,

6 Am I correct in characterizing your testimony that  
7 with the exception of a period of time of slightly less than  
8 two years, from August of 1982 to June of 1984, your  
9 relationship with him was purely social?

10 A It was not business. Yes, it was social;  
11 friendly, social. It was not business.

12 Q And during the period of time August of '82 to  
13 some time in June of 1984, your relationship was that you  
14 were an employee of a television station in the Miami area  
15 and Mr. Conant was a limited partner in the licensee entity  
16 of that station; is that correct?

17 A I was an employee of the station and he was a  
18 limited partner of that entity. I believe that's correct.

19 Q And Mr. Conant didn't supervise your work in --

20 A No, sir, he did not. No, he did not.

21 Mr. Cole, if I may add, I talked a lot of business  
22 things with Howard. It's not that I just talked tennis with  
23 Howard, and I think I know where you are going. So there  
24 were a lot of conversations with Howard related to business,  
25 the television industry, et cetera, even his steel business.

1 So categorizing the relationship as friendly is correct, but  
2 it was a business relationship in the sense that we spoke  
3 business matters.

4 I don't know -- that we transacted business? The  
5 answer is no, we did not transact any kind of business.  
6 That we spoke business? Yes, we did.

7 Q Mr. Conant never provided you directly any  
8 financial information concerning himself or his financial  
9 position prior to 1996, did he?

10 A Provided to me personally?

11 Q Yes.

12 A No, he did not.

13 Q To the best of your knowledge, did he ever provide  
14 any such information to Leticia Jaramillo?

15 A I don't think so.

16 Q And am I correct in understanding your testimony  
17 this morning concerning your familiarity with Mr. Conant's  
18 financial position that you saw two sets of documents while  
19 you were working at WDZL?

20 And correct me if I misstated it. My notes  
21 indicate that you saw documents which Mr. Conant submitted  
22 to the FCC in connection with the original WDZL construction  
23 permit application?

24 A I saw documents related to the original WDZL  
25 application, yes.

1 Q And those included documents concerning Mr.  
2 Conant's financial statement or financial situation?

3 A Yes, that file contained financial statements of  
4 Howard Conant.

5 Q Do you know when that application -- the original  
6 WDZL construction permit was filed with the FCC?

7 A I believe it was filed in 1979.

8 Q And my notes also indicate, and again please  
9 correct me if I am wrong, that you also had occasion in  
10 connection with your work in 1982 at WDZL to review some  
11 loan guarantee documents that included information about Mr.  
12 Conant's financial situation; is that correct?

13 A I worked with those documents during the time, the  
14 entire time I was at WDZL, from '82 through -- in '84.

15 The reason for that, Mr. Cole, is that three days  
16 before WDZL signed on the air, they signed on the air  
17 October 16, 1982. Three days prior the riggers in  
18 installing the antenna dropped the antenna, and WDZL went on  
19 the air three days later as prescribed, On October 16, with  
20 a drastically reduced power antenna, less than 10 percent.

21 What that did was cause revenues to go down. It  
22 caused expenses to go up because the station had to remarket  
23 itself, if you will, four or five months later when the full  
24 power antenna was installed again successfully that second  
25 time.

1           And the projections were off. There were constant  
2   conversations with the bank, and I saw Howard's statement  
3   not only with the original bank documents, but I am pretty  
4   sure I saw them again during the course of my employment  
5   there as it related to the bank loan with the Continental  
6   Bank of Illinois.

7           Q     But after you ceased being employed at WDZL you  
8   did not have access to any of Mr. Conant's financial  
9   documentation, did you?

10          A     That's correct, to the best of my knowledge.

11          Q     And at no time did you personally provide Mr.  
12   Conant with any documents concerning your personal financial  
13   situation, did you?

14          A     No, I did not, sir.

15          Q     And you also did not provide Mr. Conant with any  
16   documents concerning Leticia Rainbow's financial situation,  
17   did you?

18          A     No, sir, I did not.

19          Q     Now, this morning you testified that the loan  
20   agreement with Mr. Conant was reached sometime in 1984; is  
21   that your testimony?

22          A     I believe it was in the first half or towards the  
23   middle of 1984. To the best of my recollection, that's when  
24   it happened, yes.

25          Q     And your testimony is that at that time, that it

1 was reached some time in the first half of 1984, all the  
2 terms that you testified to this morning were in effect, had  
3 been agreed to between you and Mr. Conant?

4 A Yes, sir.

5 Q Did those terms ever change at any point between  
6 the first half of 1984, and rather than use the first half  
7 of 1984, let's just use when the agreement was originally  
8 drawn, and 1993?

9 MS. POLIVY: I will object to the form of the  
10 question, Your Honor. By this time I am confused. The  
11 terms of what? Between Mr. Conant and Rainbow Broadcasting  
12 Company?

13 MR. COLE: That's correct.

14 MS. POLIVY: I'm sorry.

15 JUDGE CHACHKIN: You can answer the question.

16 THE WITNESS: In terms of the change, we added  
17 provisions for what you have called a bridge loan.

18 BY MR. COLE:

19 Q Do you recall when you added the bridge loan  
20 provision or understanding?

21 A I'm not sure. I think it would have been late  
22 '91. I'm not sure.

23 MR. COLE: Mr. Rey, I am going to provide to you  
24 and Judge Chachkin and counsel for the parties with two  
25 copies to the court reporter a document which is 17 pages in

1 length, and is entitled "Excerpts of Transcript of Testimony  
2 of Joseph Rey in Rev v. Guy Gannett Publishing Company,"  
3 Case No. 90-2554 Civ (SM), and the abbreviation for the  
4 United States District Court for the Southern District of  
5 Florida, January 11, 1991.

6 Your Honor, I would like to have this identified  
7 and marked for identification as 10, Press Exhibit No. 10.

8 JUDGE CHACHKIN: The document described will be  
9 marked for identification as Press Exhibit 10.

10 (The document referred to was  
11 marked for identification as  
12 Press Exhibit No. 10.)

13 MR. COLE: And by way of background this is  
14 excerpts of testimony provided by Mr. Rey during the Miami  
15 hearing which were originally exchanged as an attachment to  
16 Rainbow Exhibit No. 3, which was subsequently withdrawn, and  
17 I think the record -- I intend to examine Mr. Rey about  
18 this, I have taken the pages of the transcript and put them  
19 as my own exhibit.

20 BY MR. COLE:

21 Q Mr. Rey, do you recall in January of 1991 that you  
22 testified in the Rev v Gannett litigation in Miami?

23 A Yes, I did.

24 Q And do you recall -- let me direct your attention  
25 to page 15 and 16 of the exhibit, starting at line 19 on

1 page 15, and going over to line 14 on page 16.

2 MS. POLIVY: I'm sorry. Could you give me those  
3 again?

4 MR. COLE: Sure.

5 Page 15, line 19, all the way over to page 16,  
6 line 14.

7 JUDGE CHACHKIN: If you want to read that over,  
8 Mr. Rey, before you answer any questions, you may.

9 (Witness reads document.)

10 THE WITNESS: Okay.

11 BY MR. COLE:

12 Q Now, in this hearing you were asked what the dates  
13 of the financial commitment for Mr. Conant was; is that  
14 correct?

15 A That is -- yes.

16 Q And then your counsel objected, and that objection  
17 was overruled. Going to your testimony beginning at line 6  
18 on page 16 that "This has been an ongoing conversation."

19 I said, "Obviously when litigation ended with  
20 the Supreme Court, but pick your date in the last few  
21 months."

22 There was a follow-up question, "Any time within  
23 the last few months would be fairly accurate?"

24 And you answered, "Well, since June of 1990. You  
25 know, we -- Rainbow suspected that the Supreme Court would



1 not review its own decision. It officially was made, the  
2 denial of review was made official in September so," and  
3 that's the end of your answer.

4 Was that your answer in Miami?

5 A That's my answer in Miami. My reference was  
6 reducing it to writing.

7 Q Is there anything in either the question or the  
8 answer in the transcript that I have presented to you that  
9 makes any reference to reducing anything to writing?

10 A No, sir, there isn't here. But there was a lot to  
11 do about having a tangible written document. And my answer  
12 was referring to reducing it to writing, so I am citing when  
13 it could have been reduced to writing between Howard and  
14 myself, and that could only have been done after it was free  
15 and clear and the Supreme Court.

16 Q But it was never reduced to writing, was it?

17 A No, sir, it was not.

18 Q Now, you testified this morning, Mr. Rey, that you  
19 met with Howard Conant some time toward the end of 1990. I  
20 don't recall, but I think you said sometime in November or  
21 December was the best of your recollection in 1990, to  
22 discuss the Orlando situation; is that correct?

23 A I believe it was December of 1990, yes.

24 Q And during that conversation did you have occasion  
25 to discuss with Mr. Conant his commitment to provide you

1 funds, to provide Rainbow Broadcasting funds?

2 A I don't understand.

3 I was discussing with him the status at that time  
4 of RBC, the prospect of being a sixth station, the fact that  
5 it was probably going to be worthless if this were to  
6 happen. That's the sort of conversation I had.

7 I don't understand the question.

8 Q Well, you were talking to him as a potential  
9 lender to RBC, were you not?

10 A I was talking to Howard that had agreed to lend me  
11 money, and I was bringing him up to date on the latest  
12 development which was the possibility of a sixth station  
13 scenario. By that meaning another station coming in into  
14 the marketplace, relegating us as the sixth station.

15 Mind you, WKCF, your client station, have been on  
16 the air for a number of years at that time, and had been  
17 doing maybe a two share total week audience. Moving it to  
18 Bithlo, which is a centrally located area, capable of  
19 putting an over the air signal of the three major population  
20 center of that television market, Melbourne, Daytona Beach  
21 and Orlando vis-a-vis only serving two of those from their  
22 current position at that time, Orlando and Daytona Beach,  
23 was going to make that station grow.

24 It was going to be, in my opinion, worthless for  
25 the sixth station. I was discussing all of that with

1 Howard.

2 Q During that meeting, or at the time of that  
3 meeting, which, again, probably occurred in December of  
4 1990, what was your understanding of the terms on which Mr.  
5 Conant would be willing to provide Rainbow funding?

6 A The same as before.

7 Q Now, following January 1991, you were cross-  
8 examined and let me refer you to page 13 of the transcript  
9 provided to you, which is identified as Press Exhibit No.  
10 10. Let me refer you particularly to line 20.

11 MR. SILBERMAN: What page?

12 MR. COLE: I'm sorry.

13 Page 13, line 20, over to page 14, line 11.

14 BY MR. COLE:

15 Q And ask you to review that.

16 A Thirteen, line 20?

17 Q Thirteen, line 20.

18 A To 14, line what?

19 A Line 11.

20 (Witness reads document.)

21 THE WITNESS: Okay.

22 BY MR. COLE:

23 Q You were asked there, "Is there any security that  
24 you have given or collateral for this loan?"

25 And your response at line 22 was, "Yes, a minority

1 participation on the station."

2 Do you see that?

3 A Yes.

4 Q There is then ensues some discussion of what  
5 exactly you meant by that, and at the top of page 14, line 2  
6 the question was presented, "Do you mean minority  
7 shareholder?"

8 You answered, "Shareholder, yes, that's what I  
9 mean."

10 And at line 9 further in the discussion the  
11 question was presented to you, "You are using 'minority' now  
12 in a difference sense; that he wants to be a minority  
13 shareholder of your partnership."

14 And you answered, "Correct."

15 A Yes.

16 Q Was that your testimony in Miami?

17 A Yes.

18 Q Was that accurate testimony? Did that accurately  
19 reflect the terms of your understanding with Mr. Conant?

20 A Howard was going to receive a 10 percent share of  
21 the net sales proceed. He didn't have a partnership  
22 interest. He had a share. He was also going to receive 50  
23 percent of the cash flow for the first five -- positive cash  
24 flow for the first five years and 25 percent of the positive  
25 cash flow after five years. That's what I meant by it.

1 Q Why didn't you mention the personal guarantee?

2 A I don't know. I really don't know.

3 Q Or Ms. Jaramillo's personal guarantee.

4 A I don't know.

5 Definitely in hindsight that is definitely  
6 collateral in its true word. I don't know. All I can tell  
7 you is I was extremely annoyed and very upset about this  
8 whole thing. We had gone from 1982 with the comparative  
9 hearing and cross-applications, all the way through Supreme  
10 Court only to find out that what we had preserved, we  
11 thought by leasing the space back in 1986, was being pulled  
12 from under us.

13 I can't answer your question as to why I didn't  
14 say it was my personal guarantee.

15 Q Mr. Rey, if you would refer to Press Exhibit No.  
16 10 -- let me correct that. Let me back up and start with a  
17 threshold question.

18 Now, again, you spoke with Mr. Conant in  
19 approximately December of 1990 about the Orlando situation,  
20 and in January of 1991, you were examined, or cross-examined  
21 in the Rey v Gannett litigation concerning Mr. Conant's  
22 agreement to provide financing; is that correct?

23 MS. POLIVY: I'm sorry.

24 THE WITNESS: I lost you too.

25

1 BY MR. COLE:

2 Q You spoke with Mr. Conant in December of 1990.  
3 And then a month later you were cross-examined in the Miami  
4 litigation concerning aspects of Mr. Conant's agreement to  
5 provide Rainbow funding; is that correct?

6 MS. POLIVY: If you have something to show him --

7 THE WITNESS: Yeah.

8 MS. POLIVY: -- that would help.

9 MR. COLE: I am asking if he remembers. If he  
10 doesn't remember, I will do that.

11 BY MR. COLE:

12 Q Page 8 of Press Exhibit No. 10 starting at line  
13 21. There is a reference to "this gentleman," who is later  
14 referred in the same transcript as Mr. Conant. At that  
15 point he had not been identified by name. But beginning at  
16 line 21 and proceed over to page 9, line 2.

17 A Okay.

18 Q Now, you were asked whether this gentleman, and,  
19 again, I think the parties would be willing to stipulate  
20 based on this transcript that that refers to Mr. Conant,  
21 told you he would no longer loan you the money.

22 You answered, according to the transcript, "It's  
23 pending the resolution of this matter."

24 Question: "Has he told you that if your space is  
25 not exclusive on there, that he won't finance you?"

1                   Answer: "He has told me if Channel 18 gets on  
2   that tower the likelihood is that he will not finance the  
3   station."

4                   Was that your testimony in the Miami proceeding?

5           A     It was.

6                   Howard was relying on me. There is a big element  
7   of trust between Howard and myself regarding what I thought  
8   was viable or not thought it was viable. If I were to go to  
9   Howard and say, "Howard," the day after this hearing and the  
10   judge comes back and says, okay, injunction denied, I would  
11   have gone back to Howard the very next day that were to have  
12   happened and said, "Howard, it's been denied, I don't think  
13   this is worth a penny," the likelihood that he would say,  
14   "Joe, what are we doing here then?"

15                  That's correct.

16           Q     So that is an accurate reflection of your state of  
17   mind as of January 11, 1991?

18           A     Yes, it is.

19                               VOIR DIRE EXAMINATION

20                  JUDGE CHACHKIN: Wait a minute. State of mind or  
21   what Mr. Conant told you?

22                  THE WITNESS: Well, Mr. Conant told me that he was  
23   relying on my opinion whether this was a worthwhile  
24   business. If I were to have gone to Howard the very next  
25   day, Your Honor, and say, "Judge Marcus has denied the

1 injunction. We are going to be relegated as a sixth  
2 station. I really believe that this is not going to pay for  
3 itself," I think Howard would say, "Well, Joe, then let's  
4 not do it."

5 JUDGE CHACHKIN: Well, I am not discussion what  
6 might have happened. I am asking, your answer was that this  
7 is what Mr. Conant told you.

8 Is this your recollection of what Mr. Conant told  
9 you in these words?

10 THE WITNESS: No, Mr. Conant did not tell me that  
11 in those words, Your Honor. I am putting myself into Mr.  
12 Conant's head, if you will, by assuming that I have to go  
13 back the next day, if you will, and say, "Howard, it's gone  
14 against us. I don't think this is viable. I think it's  
15 worthless." I owed that to Howard and it's a big element of  
16 trust between Howard and myself regarding this business.

17 And the likelihood that Howard would have said,  
18 "No, let's not do it."

19 JUDGE CHACHKIN: Go ahead, Mr. Cole.

20 MR. COLE: Thank you, Your Honor.

21 BY MR. COLE:

22 Q Now, between your December 1990 conversation with  
23 Mr. Conant and your conversation some time in June or July  
24 of 1991 with Mr. Conant, did you communicate with him at all  
25 about the loan agreement between Conant and RBC?



1           A     I communicated with him, again, the status as to  
2     where we were. Judge Marcus had rendered his decision. It  
3     did not give us injunctive relief we were seeking. I also  
4     told him that things were changing and that I felt now more  
5     optimistic, especially with the advent of the Nielsen meters  
6     that were coming soon to the marketplace.

7                     I felt that there was light at the end of the  
8     tunnel.

9           Q     So was that just one conversation that you just  
10    described between you and Mr. Conant?

11          A     Yes.

12          Q     And that occurred after Judge Marcus's decision in  
13    June of 1991?

14          A     Yes.

15          Q     Had you had any communication with Mr. Conant  
16    about this matter between that and going backwards to the  
17    December 1990 conversation?

18          A     I don't recall. I don't think so. There was  
19    nothing happening with this.

20          Q     Now, you mentioned in your last answer the  
21    decision of the Nielsen company to put meters into the  
22    market.

23                     Who told you that Nielsen was going to put meters  
24    into the market?

25          A     I remember getting a call from Stan -- I can't

1 remember his last name -- from Nielsen. It was a phone  
2 call.

3 Q Would that be Stan Peterson?

4 A It could very well be.

5 Q But you called him Stan because -- I'm not sure  
6 that you're sure. But you are sure that his first name is  
7 Stan?

8 A Fairly sure.

9 Q Do you recall when Stan called you up about that?

10 A I believe he called me in late May, early June,  
11 thereabouts, and we had a conversation that Nielsen was  
12 going to be metering the market. I think he mention San  
13 Diego as well.

14 Q And Stan worked for Nielsen; is that correct?

15 A Yes.

16 Q Why did he call you?

17 A I think he was looking for the business.

18 Q Do you recall whether he told you when meters  
19 would be in the market?

20 A I could be mistaken, but I think they were  
21 shooting for November '92. Maybe summer '92. It was in '92  
22 sometime. It takes them some time to get set up.

23 Q So am I correct that Stan called you some time  
24 prior to June of '91 and told you that there would be  
25 metering in November '92; is that your testimony?

1           A     He called me around May - June of 1991. I don't  
2     know exactly when. And the conversations as I recall them  
3     indicated that Nielsen was going to be having the meters in  
4     place operational by '92, second half of '92. November  
5     comes to mind. That's the rating period month.

6           Q     Was it your understanding from this conversation  
7     that Nielsen had already committed to putting meters in the  
8     market?

9           A     It was my recollection that Orlando was going to  
10    be a metered market, yes.

11                    Again, San Diego comes to mind as well. And I  
12    don't recall if San Diego was going to be first and Orlando  
13    second. But I do recall that Orlando was going to be a  
14    metered market in the very near future.

15          Q     And that was in your mind your understanding that  
16    it was a definite thing, that was definitely going to  
17    happen?

18                   MR. EISEN: Objection, Your Honor. The use of the  
19    word "commitment" in the previous question --

20                   JUDGE CHACHKIN: I will sustain the objection.

21                   MR. COLE: Thank you, Your Honor.

22                   BY MR. COLE:

23          Q     Do you recall whether Stan told you that any other  
24    stations had committed to subscribing to a Nielsen metered  
25    service?

1           A     I don't recall.

2           Q     Now, you testified this morning, Mr. Rey, that  
3     sometime I believe in the summer of 1991, and please correct  
4     me if I have got that date wrong, but I believe sometime in  
5     the summer of 1991 Mr. Conant offered RBC a form of bridge  
6     financing; is that correct?

7           A     I don't know if it was summer. It might have been  
8     late -- I don't recall when, but I think '91 is accurate.  
9     We talked about the fact that it was a sixth station it was  
10    going to require more capital before the station broke even.  
11    So there was going to be the need for sure more money to see  
12    the station through its long-term viability.

13                I discussed with him what he thought from a  
14    businessman's point of view the idea of raising equity  
15    capital. He thought it was prudent and made sense in light  
16    of the present circumstances, and we discussed, and we  
17    agreed that if there was a need, that he would do what you  
18    call a bridge loan, yes.

19           Q     Were there any other additional terms with Mr.  
20    Conant?

21           A     We would repay the loan after 90 days on air, and  
22    he would retain the 10 percent proceeds at sale from the net  
23    sale price.

24           Q     So those would be the same terms that were  
25    applicable in his original loan agreement; is that correct?

1           A     Well, the original loan agreement called for  
2     payout over five years. It would have been paid out in 90  
3     days.

4           Q     I stand corrected. I apologize.

5                     Any other terms?

6                     MS. POLIVY: Objection, Your Honor.

7                     BY MR. COLE:

8           Q     Did Mr. Conant in adding the bridge loan provision  
9     to his understanding with RBC include any other terms or  
10    conditions besides what you've described so far?

11          A     Well, the personal guarantees would still have  
12    been in effect, that kind of thing, if that's what you are  
13    asking. Nothing comes to mind at this time.

14          Q     Do you have Joint Exhibit No. 2 in front of you,  
15    which is the fifth extension request?

16          A     Okay.

17          Q     Let me refer your attention to page 3 of that  
18    exhibit, which is actually Exhibit No. 1 of the application,  
19    and page 2. If you looked at the typed pagination in the  
20    upper right-hand corner, it refers to page 2. The  
21    pagination within the exhibit is handwritten in the lower  
22    right-hand corner.

23                     Do you see that page?

24          A     Handwritten 3 in the lower right-hand corner?

25          Q     Right.

1           A     Yes.

2           Q     And I refer you to the second sentence of the  
3     first full paragraph which reads, "Actual construction has  
4     been delayed by a dispute with the tower owner, which is the  
5     subject of legal action in the United States District Court  
6     for the Southern District of Florida."

7                     Do you see that language?

8           A     Yes.

9           Q     Is it your testimony this morning that the delay  
10    that occurred was a result of Judge Marcus's order during  
11    the prehearing conference requiring the maintenance of the  
12    status quo?

13                    MS. POLIVY: I'm going to object to the question,  
14    Your Honor. The sentence that you just read him says "The  
15    actual construction has been delayed by a dispute with the  
16    tower, and which is the subject of legal action in the  
17    United States District Court."

18                    It doesn't say what you have just asked him, the  
19    question.

20                    MR. COLE: No, I asked him whether that was his  
21    testimony this morning. As I understand his testimony this  
22    morning, he has indicated that Rainbow did not proceed with  
23    construction during the period of time August -- or November  
24    of 1990 through June of 1991 because of an order from Judge  
25    Marcus requiring the maintenance of the status quo.

1           Now, I am asking him whether it was that order  
2       which is reflected in that sentence in his extension  
3       application.

4           MR. EISEN: Your Honor, that's a different  
5       question than counsel asked previously.

6           JUDGE CHACHKIN: Well, whatever it is do you  
7       object to that question?

8           MS. POLIVY: Well, yes, I do, Your Honor, because  
9       the order that he talked about was the order going to the  
10      Defendant that he referred to, which is in Exhibit 5.

11          MR. COLE: No, that is not true, Your Honor.

12          JUDGE CHACHKIN: Why don't you just ask your  
13      question without referring to his previous testimony.

14          MR. COLE: Thank you.

15          BY MR. COLE:

16          Q     Take the sentence in -- refer to the sentence in  
17      the exhibit which I referred you to, that is, "The actual  
18      construction has been delayed by the dispute with the tower  
19      owner, which is the subject of legal action in the United  
20      States District Court for the Southern District of Florida."

21                  What was the source of that delay? Could you  
22      explain that, please?

23          A     The only thing that comes to mind, Mr. Cole, is  
24      the fact that we could not build because of the Judge Marcus  
25      order.

1           Now mind you, all this time I am under the  
2           impression that I have two years to build. So to put aside  
3           what I thought might have been a month or two, because  
4           everybody expected Judge Marcus to come back fairly quickly,  
5           was somewhat insignificant within a 24-month span.

6           But he did order the status quo, and that's the  
7           way I understood it, and I could not build on my own. I  
8           have to go through the landlord. The landlord had a clear  
9           desire to do a single construction scenario. I don't think  
10          it could have been done even if I wanted to do a single  
11          building scenario for myself. That's the way I understood  
12          it.

13          Q     So that counsel for Rainbow are happy and the  
14          record is clear, when you referred to Judge Marcus's order,  
15          you were not referring to that which has been introduced  
16          into evidence as Rainbow Exhibit 5, are you, the written  
17          order of Judge Marcus dated January 2, 1991?

18          A     I am referring to when I was present in front of  
19          Judge Marcus in that November, whatever date in November  
20          1990 prehearing conference. I mean, there was counsel for  
21          Rainbow. There was counsel for the tower owner. And I as  
22          the principal was present. And I recall the judge bringing  
23          up the subject on his own, and I understood that he wanted  
24          to preserve the status quo; that the order came out, I don't  
25          know, six weeks later. I'm not surprised. His court was



1 very busy.

2 Q Do you recall the judge's precise language that  
3 led you to believe that the status quo had to be preserved  
4 with respect to Rainbow as well?

5 A Words that come to mind is "no construction." No,  
6 I don't recall the exact, precise language, sir. I just  
7 walked away with the understanding that Judge Marcus wanted  
8 the status quo preserved.

9 Q And so is it your testimony that Rainbow Exhibit  
10 No. 5, the order resetting preliminary injunction hearing,  
11 does not accurately reflect Judge Marcus's order?

12 MS. POLIVY: Rainbow Exhibit 5?

13 MR. COLE: Exhibit 5. I'm sorry. Let me rephrase  
14 that question.

15 BY MR. COLE:

16 Q Is it your testimony that Rainbow Exhibit 5, the  
17 order resetting preliminary injunction hearing, does not  
18 accurately reflect what you understood to be Judge Marcus's  
19 instruction to the parties at the prehearing conference you  
20 attended?

21 A I don't really understand what you are getting at,  
22 Mr. Cole.

23 From my point of view from that November meeting,  
24 or prehearing conference, to use your legal jargon, I walked  
25 away that this gentleman, the judge, wanted the status quo